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No. 03-942

Supreme Court, U.S.
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In The

Supreme Court of the United States

BETTY C. DAHLQUIST, Pro Se,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Washington State Supreme Court

PETITION FOR REHEARING

BETTY C. DAHLQUIST
Pro-Se, Petitioner
15238 SE 272 Street
Kent, WA 98042
253-631-2906

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PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner respectfully petitions this Honorable Court for rehearing.

This petition for rehearing is intended to call for the Court to affirm its historical mandate, "Equal Justice Under Law."

In 1969, this Court made an historic decision that "the Court must accept as true all well pleaded allegations of fact and view them in the light most favorable to the petition." See *Jenkins v. McKiethen*, 395 U.S. 411, 421-422 (1969).

To invoke jurisdiction of Federal Court, litigant must have suffered (App. Supp. 25), or be threatened with (App. Supp. 1-9), actual injury (App. Supp. 22-24) traceable to Respondent (App. Supp. 26-30, 10-14) and likely to be redressed by favorable judicial decision (App. Supp. 16-21, 31-33). U.S.C.A. Const. Art. 3, § 1 et seq.

STATEMENT OF SUBSTANTIAL GROUNDS OF A CONTROLLING EFFECT (Rule 44.2)

Following the running of the statute of limitations RCW 4.16.040 (App. Supp. 1-9, 25) (letter of 4/26/99, forensic engineer Gregory A. Marbet verifying "the fracture surface appeared to be the result of an impact as opposed to breakage from wood rot"), Daryl Dahlquist, in accordance with the terms and conditions of the May 5, June 3, and July 12, 1977 correspondence, CR Rule 901(b)(4), replaced the fence and power pole (App. Supp. 15). Then, on January 17, 1987, Vukich, for a second time,

took the fence and power pole down (App. Supp. 10-14, picture #4).

Impossibility of performance of contract. A doctrine under which a party to a contract is relieved of his or her duty to perform when performance has become impossible or totally impracticable (through no fault of the party). The basic Uniform Commercial Code sections dealing with impossibility of performance are §§ 2-613, 2-615, 2-616 (App. Supp. 1-9, 25, 15, 10-14, Picture #4).

Mitigation of Damages, as referred to in the Defendant's Response to Plaintiff's Motion for Summary Judgment, CR 42(d), CR 41(a)(4), i.e., F.R. Civ. P. 41(a), etc., I hereby give notice in accordance with CR 9(k)(1) of the case(s) of *Darnell v. Taylor*, 236 So. 2d 57, 61 (La. App. 3rd Cir. 1970). Mitigation of damages is an affirmative defense and applies when Plaintiff fails to take reasonable actions that would tend to mitigate his injuries. *Mott v. Persichetti*, 534 P.2d 823, 825 (Colo. App. 1975).

Betty Dahlquist's predecessor in interest, Fred and Cecile Martel, are in the chain of title by title insurance (App. Supp. 26-30).

ER Rule 803(a)(15). Statements in Documents Affecting an Interest in Property. In *Adams v. Mignon*, 197 Wash. 293, 303, 84 P.2d 1016 (1938), the Court held that the Trial Court did not err when it admitted an abstract of title into evidence: "The abstract, while not conclusive as to facts shown by the record, was admissible for what it was worth." (See letter dated June 30, 1999 in Petitioners 20-day response.)

Purpose of Limitation Law. Legislative purpose of statutes of limitation is to force claims to be litigated while pertinent evidence is still available and witnesses retain clear impressions of the occurrence involved in litigation. *Summerrise v. Stephens*, 75 Wash. 2d 808, 454 P.2d 224 (1969). (App. Supp. 1-9, 25, 15, 10-14, 26-30).

Betty Dahlquist's predecessor in interest, Fred and Cecile Martel, satisfied the requirements to claim title (App. Supp. 31-33) by adverse possession, specifically satisfying RCW 4.16.020, the ten-year statute of limitations (App. Supp. 16-21). (February 22, 2001, Motion to Reschedule Response to Compel Answers to Interrogatories, etc.). In Sub 27A and in harmony with CR 9(j), pleading private statute at pages 6 of 9 through 8 of 9, (App. Supp. 16-21), Petitioner noted the following five cases:

> (1) Possession of property in adverse manner for period of "ten years" ripens into an original title which can be divested only by such acts as are required to divest title acquired by deed. *El Cerrito, Inc. v. Ryndak*, 60 Wash. 2d 847, 376 P.2d 528 (1962).
>
> ER Rule 803(a)(16) Statements in Ancient Documents. The rule reduces the time limit from 30 to 20 years. Compare *Spokane v. Catholic Bishop*, 33 Wn.2d 496, 206 P.2d 277 (1949).
>
> ER Rule 902(h) Acknowledged Documents. The rule is consistent with RCW 64.08.050. The persons authorized to take acknowledgments are defined by RCW 64.08.010.
>
> (5) Possession to be adverse must have continued for entire statutory period. *Bowdan* –

Gazzam Co. v. Kent, 22 Wash. 2d 41, 154 P.2d 292 (1944).

(6) To establish title by adverse possession, claimants must prove their possession is actual and uninterrupted, open and notorious, hostile and exclusive, under a claim of right made in good faith for the statutory period. *Roy v. Goerz*, 26 Wash. App. 807, 614 P.2d 1308 (1980).

(9) One of the main elements to be considered under RCW 4.16.020 is the elements including whether "possession was adverse or permission" are questions of fact which, when resolved by the trial court, will not be overturned if supported by substantial evidence. *Diel v. Beekman*, 7 Wash. App. 139, 499 P.2d 35 (1972). When the Trial Court's findings as to whether claim based on adverse possession is established or sustained by the record, the Supreme Court will not substitute its judgment thereon. *Hill v. Weidert (L.W.) Farms, Inc.*, 75 Wash. 2d 871, 454 P.2d 220 (1969). (App. Supp. 11-13).

CR RULE 41. Dismissal of Action. CR 41(a)(4) Effect. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

The test to determine adjudication upon the merits, I address Civil Cause 91-2-14190-8. Vukich is the Plaintiff. COMPLAINT TO QUIET TITLE, QUASH QUIT CLAIM DEED, ENJOIN TRESPASS AND FOR DAMAGES FOR TRESPASS (CP 593-616). Betty Dahlquist was named individually and as court-appointed guardian for Fred

Martel as a defendant, and Daryl Dahlquist and Cecile Martel were also named. On May 11, 1993, the case was dismissed (CP 630-638).

Then on November 5, 1993, Vukich presented Betty Dahlquist with a MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT AGAINST BETTY DAHLQUIST and to have the deeds declared null and void (CP 237-252) in the 87-2-15848-9 cause. Said motion was dismissed on January 7, 1994, thus acting as an adjudication upon the merits (App. Supp. 31-33). (See letter dated January 18, 2000.) Both issues, the May 11, 1993 case dismissed and the January 7, 1994 motion denied, are based on and include the same claim.

NOTE: Following the May 11, 1993 case dismissal, Vukich went on to maintain criminal proceedings against Daryl Dahlquist under Seattle District Court Cause No. L 00037745 that, in turn, led to Daryl serving eight and a half months in jail, from September 26, 1994 to May 10, 1995, and then the Order on Commitment was declared null and void, vacated July 6, 1995.

ER Rule 408, fourth sentence, is satisfied by pages 104-106 of the verbatim report of proceedings (Exhibit 6 of the February 22, 2001 Motion to Reschedule Response to Compel Answers to Interrogatories, etc. at page 2, third paragraph). In regards to Vukich's Seattle district court testimony that contradicts the verbatim report of the May 11, 1993 proceeding.

ER Rule 408, fourth sentence, reads: "This rule also does not require exclusion when evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving

an effort to obstruct a criminal investigation or prosecution." This sentence is consistent with the previous Washington law, admitting evidence of compromise, and offers of compromise when offered for some purpose other than liability. Meisenholder § 9. See *Matteson v. Ziebarth*, 40 Wn.2d 286, 242 P.2d 1025 (1952) (to prove lack of good faith where good faith is an issue); *Robinson v. Hill*, 60 Wash. 615, 111 P. 871 (1910) (to prove employer/employee relationship).

"Equitable relief is available if there is no adequate remedy at law." *Orwick v. Seattle*, 103 Wash. 2d 249, 252, 692, P.2d 793 (1984). (App. Supp. 22-24 . . . 16-21, 31-33, Equity acts in personam, the chain of title).

Mutuality of Estoppel Doctrine. This doctrine dictates that, "A judgment will not be held conclusive in favor of one person unless it would be conclusive against him had the case been decided the other way." *Foltz v. Pullman, Inc.*, 319 A.2d 38, 41 (Del. Super. 974) CR 9(k)(1).

Civil Cause No. 93-2-28320-2 CR 19, and F.R. Civ. P. 19(a). "Necessary parties are those who must be included in action as plaintiff (chain of title) or defendant, unless there is a valid excuse for their nonjoinder. Those persons who have such an interest in controversy that a final judgment or decree cannot be made without affecting their interest or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience." *Royal Petroleum Corp. v. Dennis*, 160 Tex. 392, 332 S.W. 2d 313, 314 (Tex. 1960). CR 9(k)(1). (App. Supp. 22-24, 26-30, 25, 15, 10-14, picture #4 . . . 16-21, 31-33).

Fraud in fact and in law (RCW 4.16.020, RCW 4.16.040) and RCW 19.36.010, Statute of Frauds, originally passed in 1677, reference to Vukich's alleged verbal agreement with Fred Martel, and Petitioner's signature on stipulated decree from Cause No. 87-2-15848-9 was obtained by duress, and as a defense to a civil action, it must be pleaded affirmative. F.R. Civ. P. 8(c), "The Court must accept as true all well-pleaded allegations of fact and view them in the light most favorable to the Petitioner." *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969). For more than 20 years, this decision has been used as a basic ruling in viewing a complaint when a motion to dismiss a claim for failure to state a claim is presented.

> "Dahlquist challenges the validity of the 1990 stipulated decree by claiming that she entered into it under duress." She has cited in her 20-day response, Civil Rule 9(k)(1), the following 13 cases:
>
> *Sessions v. Meadows*, 13 Cal. App. 2d 748, 57 P.2d 547, 548 (Cal. App. 1936);
>
> *Collins v. Seyfang*, 49 WA 554, 95 p. 1088, 1089 (Wash. 1908);
>
> *Hyde v. Lewis*, 25 Ill. App. 3d 495, 323 N.E. 2d 533, 537-539 (Ill. App. 1975);
>
> *Abdallah, Inc. v. Martin*, 242 Minn 416, 65 N.W. 2d 641, 644-645 (Minn. 1954);
>
> *Goldstein v. Equitable Life Assur. Sec. of U.S.*, 160 Misc. 364, 289 N.Y.S. 1064, 1067 (1936);
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> *Johnson v. McDonald*, 170 Okl. 117, 39 P.2d 150 (Okl. 1935);
>
> *Citizens Standard Life Ins. Co. v. Gilley*, Tex. Civ. App., 521 S.W. 2d 354, 356 (1975);

Parissella v. Fotopulos, 111 Ariz, 4:522 P.2d 1081, 1083 (Ariz. 1974);

Ledbetter v. Webb, 711 P.2d 874, 103 N.M. 597 (N.M. 1985);

Jacobs v. Phillipi, 697, P.2d 132, 102 N.M. 419 (N.M. 1966);

Robinson v. Katz, 610 P.2d 201, 94 N.M. 314 (N.M. 1980);

James Talcott, Inc. v. Finley, 389 P.2d 988 (1964),

Gardner v. Meiling, 572 P.2d 1012, 280 OR 665 (1977).

Unconscionable bargain or contract. A contract, or a clause in a contract, that is so grossly unfair to one of the parties because of stronger bargaining powers of the other party; usually held to be void as against public policy. An unconscionable bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept on the other. *Hume v. U.S.*, 132 U.S. 406, 10 S. Ct. 134, 33 L.Ed. 393 (1889), Civil Rule 9(k)(1).

Unconscionability. A doctrine under which courts may deny enforcement of unfair or oppressive contracts because of procedural abuses arising out of the contract formation, or because of substantive abuses relating to terms of the contract, such as terms which violate reasonable expectations of parties or which involve gross disparities in price; either abuse can be the basis for a finding of unconscionability. *Remco Enterprises, Inc. v. Houston*, 9 Kan. App. 2d 296, 677 P.2d 567, 572 (1984), Civil Rule 9(k)(1).

Frustration of contract. This doctrine provides, generally, that where existence of a specific thing is, either by terms of contract or in contemplation of parties, necessary for performance of a promise in the contract, duty to perform promise is discharged if thing is no longer in existence at time for performance. *Glidden Co. v. Hellenic Lines, Limited, C.A.N.Y.*, 275 F.2d 253, 255 (2nd Cir. 1960), CR 9(k)(1) (App. Supp. 1-9, 25, 15, 10-14 . . . 16-21, 31-33).

Article III of the Constitution denies Federal Courts power to decide questions that cannot affect rights of litigants in case before them, and confines them to resolving "real and substantial controversies admitting of specific relief through decree of conclusive character as distinguished from opinion advising what law would be upon hypothetical state of facts." U.S.C.A. Const. Art. 3, § 1 (quoting *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 241, 57 S. Ct. 461, 464, 81 L.Ed. 617 (1937).

CONCLUSION

For the foregoing reasons, the Petition for Rehearing should be granted and the petition reconsidered.

Respectfully submitted,

BETTY C. DAHLQUIST
Pro-Se Petitioner
15238 SE 272 Street
Kent, WA 98042
253-631-2906

CERTIFICATE OF GOOD FAITH

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

_____

Betty Dahlquist

LOUTHAN, COMPTON & MOE*
ATTORNEYS

6½ Boston
Queen Anne Hill
Seattle, WA 98109
(206) 685-1084

May 5, 1977

Fred Martell
15328 S.E. 272nd
Kent WA 98031

Dear Mr. Martell:

I am writing at the request of Patrick Vukich regarding a Mobile Home which you have on your property adjacent to Mr. Vukich's property.

Late last year Pacific Northwest Bell, at your request, installed telephone service on the rear of your property. In doing so Bell buried lines across Mr. Vukich's property. A dispute has arisen with Bell which led Mr. Vukich to have his property surveyed.

As a result of the survey it was discovered that the Mobile Home located on the Northeast Corner of your property, commonly known as 15328 S.E. 272nd, Kent WA, is astraddle of the property line common to you and Mr. Vukich. The Mobile Home encroaches on Mr. Vukich's property along its length by approximately six feet. A

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* Any typographical and/or incorrect punctuation found in the following Appendix pages were left intentionally to show accurately how the original documents appeared.

photo copy of the survey report is enclosed which illustrates the encroachment.

Demand is hereby made that you remove the Mobile Home from Mr. Vukich's property. If it is not promptly removed it will be necessary to institute suit for its removal and for damages.

Sincerely,

Louthan, Compton & Moe

/s/ Richard Louthan
Richard Louthan
RL:cw

cc: Patrick Vukich

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June 3, 1977

Louthan, Compton & Moe
Attorneys at Law
6-1/2 Boston
Queen Anne Hill
Seattle, WA 98109

RE: Fred Martell
Our File 2230 jam

Attention: Mr. Richard Louthan

Dear Mr. Louthan:

This letter is in response to your letter of May 5, 1977, directed to our client, Fred Martell, of Kent, Washington. Please accept my apology for the delay in responding to the letter. I wanted to be able to meet with my clients and inspect the property before making a decision as to their responsibility.

After inspection and consultation with our client, I have determined the following things to be factual:

1. Our clients bought the property on which the trailer is located, and about which you complain, in September, 1953.

2. The property then purchased was supplemented by a parcel southerly and along Southeast 272nd Street, SSH #5, acquired April, 1955.

3. These two parcels form a common boundary line with Mr. Vukich's property, being our client's east boundary line and your client's west boundary line.

4. At the time our clients purchased their property, there was a trailer pad already installed at the location where the subject trailer now rests. Since the date of purchase, there has been a trailer occupying that pad almost continuously to the present date. Non-occupancy was only by virtue of change of tenants as to that pad.

5. East of the trailer pad and running in a generally northerly and southerly direction is an existing fence. This fence extends generally southerly from the north line of our client's property for approximately 75' to 100'.

6. The north terminus of this fence was located to correspond with a stake which the sellers pointed out to our clients as being the boundary stake between the property they purchased and the property occupied by your client.

7. Since the time of the purchase of the property, our clients have not only occupied the trailer pad, but have cared for and maintained the property and also used the property for driveway purposes up to the existing fence.

8. During all of the period of time since 1953, they have also believed and claimed that they owned this parcel of property.

9. Our clients did not authorize Pacific Northwest Bell to install the telephone service you mention in your letter.

It is my understanding from interview of our clients, that your client purchased the property he now occupies to the east of our client's property approximately two years ago. The trailer, trailer pad, driveway and fence were all there at the time of his purchase. Neither he nor any prior owner ever asserted a right to the property in question and about which you complain until a short time before the receipt of your letter.

From the foregoing facts and assuming the survey stake located by someone at your client's request is accurate, I have concluded as follows:

That our client has occupied and possessed the property under claim of right for longer than the period required by the adverse possession statute and doctrine of the state of Washington, and therefore owns the property.

Further, that our clients have the continued right to occupy such property without interference by Mr. Vukich in the future.

I therefore urge you to advise Mr. Vukich to accept the boundaries as long established on this parcel of property and not to institute suit for the removal of subject trailer, as threatened by your letter of May 5, 1977. If you disagree with these facts and the conclusion which I have drawn, I would be pleased to hear from you and have you set forth the facts on which you would base such a disagreement. I would hope that no precipitous suit would be

commenced which would be extremely costly to both your client and our clients.

Very truly yours,

CURRAN, KLEWENO, JOHNSON & CURRAN

/s/
James P. Curran

JPC:jb

July 12, 1977

Mr. Richard Louthan
Attorney at Law
6-1/2 Boston
Queen Anne Hill
Seattle, WA 98109

RE: Fred Martell
Our File 2230 jam

Dear Mr. Louthan:

This is to confirm my telephone conversation with you on July 11, 1977. On that date, your client, Mr. Vukich, came upon the property of Mr. and Mrs. Martell and accosted Mr. Martell, who was working at the time.

At that time, among other things, he demanded one-half of the rent on the trailer on the northeast corner of the property. He also stated that he was going to take a bulldozer and bulldoze everything off to his boundary line as set by the survey, and made other threats.

In addition to Mr. Martell, these threats were heard by Mr. Floyd Anderson who occupies a trailer space on the property.

I must advise you that if any of the threats made are carried out in any way, it will be necessary to hold Mr. Vukich responsible in damages for all costs and expenses incurred as a result of any overt act since he has full knowledge of the disputed boundary line.

I have also questioned Mr. and Mrs. Martell about the telephone line and have determined that you are correct. After the line was first located by the telephone company on Vukich's property, it was later relocated and at that time Mr. Martell did inform the telephone company that

the place where the line is now located was his boundary line. This only confirms his longheld belief that hs boundary line was further east than the survey stake.

With reference to your statements about the trailer occupying the northeast corner, I have gone into that more thoroughly and wish to advise you as follows:

1) All trailers that have occupied that space have been directly adjacent to and in line with a concrete patio which was installed there more than 20 years ago.

2) The space is presently occupied by Mr. Judson, whose trailer has been there for more than 4 years. This trailer is approximately 25 feet long.

3) Prior to that the space was occupied by Virginia and Terry Steel, who had a longer trailer, approximately 45 to 50 feet. They occupied the space for 7 or 8 years.

4) The immediate prior tenant to the Steels was Mr. and Mrs. Blevins, who had a 45 foot trailer and occupied it for an extended period of time.

In light of the foregoing, I do not believe that the conclusions I reached in my prior letter have changed by anything that has been stated by you. As we agreed, it would be very detrimental and damaging and costly to have Mr. Vukich commence any precipitous action on his own. Further, this case does not warrant a lawsuit and should be somehow adjusted in an amicable manner. If there is anything further I can do to aid in solving the problem, I

will be willing to, but it must be short of moving the existing trailer at the northeast corner.

Very truly yours,

CURRAN, KLEWENO, JOHNSON & CURRAN

James P. Curran

JPC:jb

January 1, 2000

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In the sixth edition of Black's Law Dictionary at page 1519, it defines the two witness rule:

> "This rule requires that falsity element of a perjury conviction be supported either by direct testimony of two witnesses or by direct testimony of one witness plus independent corroborating evidence." (People v. Fueston, Colo. App., 717 P.2d 978, 990)

The issue being addressed here is that – today's date is January 1, 2000. Turning the clock back (legal memory) to 14 years earlier to the spring of 1986, when I, Daryl, was asked by my grandparents, Fred and Cecile, to build a fence, I proceeded to build what I refer to as Fence #1. Shortly after Fence #1 was built, I was told be Cele Abel that Pat Vukich was on the phone and when I asked him

"what seems to be the problem", Pat Vukich told me over the phone, "You'd better watch your back." Eventually I took Fence #1 down.

After removal of Fence #1, I proceeded to build Fence #2, which was eventually torn down in the middle of the night. Picture No. #2 shows what was left of Fence No. 2.

Then there was the incident of August 25, 1986, mentioned in my previous letter of September 14, 1999, where Pat Vukich talked to me, the final result of which was Pat saying, "Fuck me three times and I'm gonna' fuck you." Said exhibit is noted as Exhibit 17 on the back of page 1 in my September 14, 1999 letter.

On September 4, 1986, I had Lot 9071 surveyed and then, after reading the letters of June 3, 1977 and July 12, 1990 77 (noted in my April 12, 1999 letter marked as Exhibit 2 and Exhibit 3), I proceeded to build Fence #3. And on January 17, 1987, at 12 noon, Pat Vukich took his bulldozer and bulldozed Fence #3 down as is noted in Picture No. #4. And then and there he told me, "You have one day to remove it or it's mine."

It is to be noted that Parcel B and Tax Lot 9071 are the same. Then, on March 3, 1987, under Aukeen District Court No. 1002264, Pat Vukich testified in the criminal proceedings against me under oath when asked, as follows:

> "Q: Have you ever allowed the Martel's to ever use any of Parcel B?
>
> A: No."

The reason for mentioning the three fences as well as the testimony of Pat Vukich as of March 3, 1987 is the fact that there was never, ever any mention by Pat Vukich of any so-called verbal agreement during the issues with the

first, second or third fence. Then Pat Vukich changed his whole testimony some 904 days later (87-2-15848-9) during the civil trial on August 23, 1989, where Pat Vukich stated for the record when asked:

"Line 15: Q. Alright. When you found out where
Line 16: the line was and you saw the encroaching trailer, what did you do?

Line 17: A. I had a conversation with Mr. Martel and came to an agreement with Mr.
Line 18: Martel.

Line 19: Q. (by Mr. Graham) You had a conversa-
Pg. 11 Line 1: tion with Mr. Martel?

Line 2: A. Uh-huh.

Line 3: Q. What did you say to Mr. Martel?

Line 4: A. That's what I just said that I told

Line 5: Mr. Martel that I would like the trailer moved when

Line 6: Mr. Jodson moves off the property.

Line 7: Q. And then what did Mr. Martel say?

Line 8: A. He agreed."

See April 12, 1999 letter for more specific details.

Again, on page 1515 of the 6th edition of Black's Law Dictionary, it defines the word truth as:

> "There are three conceptions as to what constitutes "truth": agreement of thought and reality; eventual verification; and consistency of thought with itself."

Page 1477. Theft by deception. Under Model Code § 223.3, a person is guilty of theft by deception if he purposely obtains property of another by deception.

Theft by false pretext.

> "Obtaining property by means of false pretext with intent to deprive owner of value of property without his consent and to appropriate it to own use. Followed by such appropriation." Hoovel v. State, 125 Tex. Cr. R 545, 69 S.W. 2d 104, 106.

As of today's date, January 1, 2000, Pat Vukich has taken 100% possession of Parcel B, Lot 9071, and has erected a six-foot chain link fence. Additionally, he has obtained a civil judgment against me (under color of official right), and yet through the above noted facts I have satisfied the requirements to the two witness rule as is defined by Black's Law Dictionary, noted above.

/s/ Daryl Dahlquist CP 222
Daryl Dahlquist
Time 10:46 am at Suden printing 1-6-00
at 104th and 272nd
original sent to G. Locke.



#1



#2

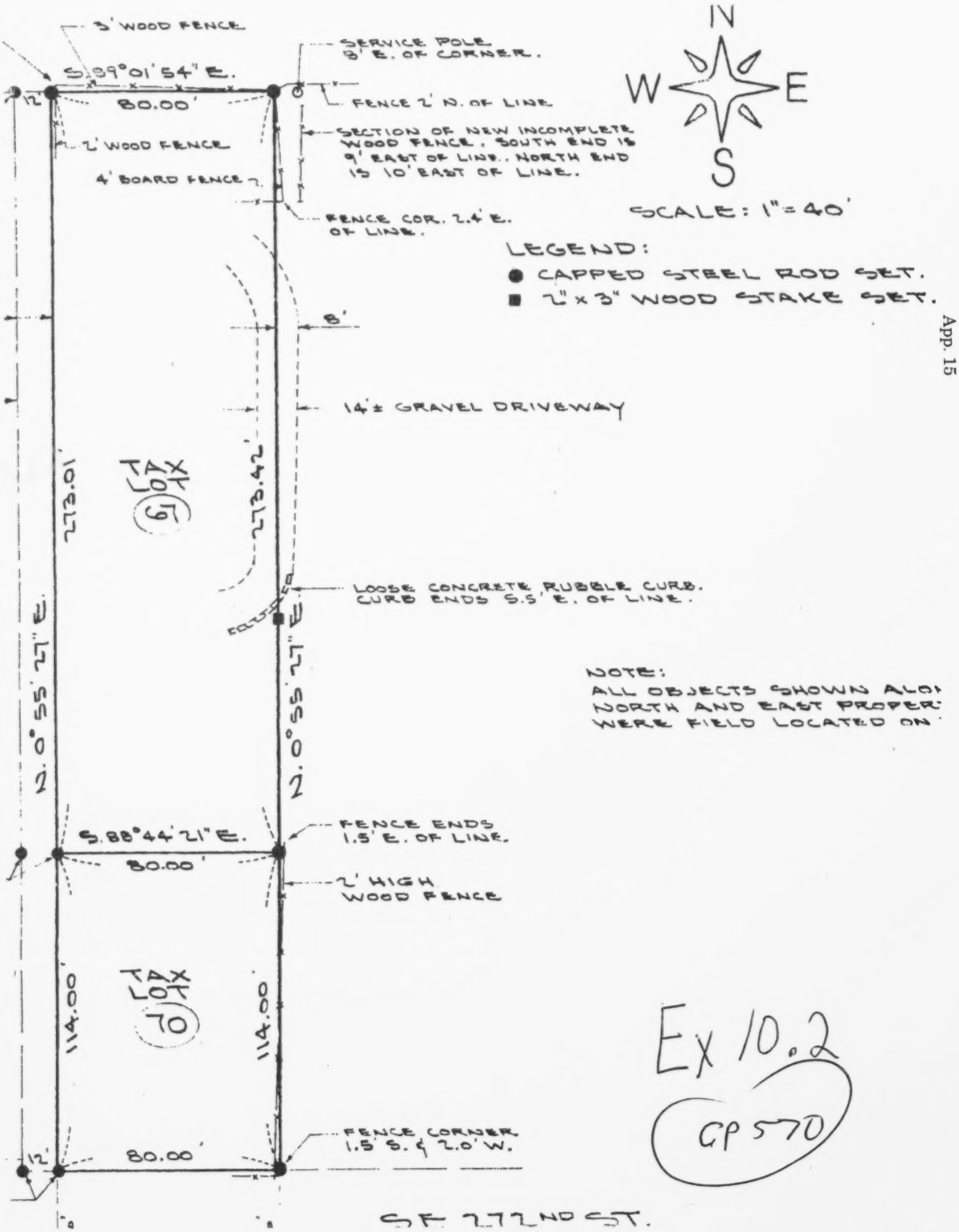


#3



#4

(274) -275



NOTE:
ALL OBJECTS SHOWN ALOI
NORTH AND EAST PROPER
WERE FIELD LOCATED ON

Ex 10.2
CP 570

SF 7772ND ST.

EXCERPT OF MOTION TO RESCHEDULE RESPONSE TO COMPEL ANSWERS TO INTERROGATORIES, ETC.

February 22, 2001

AT page 3 line 16 thru line 22 it reads

> BETTY DAHLQUIST has framed a set of Interrogatory questions which attempt to address the substance of the previous adverse possession litigation, in an apparent effort to again re-open that litigation. Mr. VUKICH has objected to such questions on grounds of relevance. BETTY DAHLQUIST has no interest in this property as a matter of law.

WITH reference to the statement that BETTY DAHLQUIST has no interest in this property as a matter of law. I BEETY DAHLQUIST declares posatively in accordence with CR 9 section (J) Pleading private statute RCW 4.16.020 the law of adverse possession as defined under said statute and declares as follows;

(1) possession of property in adverse manner for period of "ten years" ripens into an original title which can be divested only by such acts as are required to divest title acquired by deed. (El Cerrito, Inc. v Ryndak (1962) 60 Wash. 2d 847, 376 P2d 528

(2) to satisfy the required "ten year" period as is defined under RCW 4.16.020 is as follows;

(3) the obligation of the the "ten year" period is met and satisfied in accordence with ER 803(a)(16) by the two page May 31st 1991 affidavit of the grantor herself BETTY DAHLQUIST mother CECILE MARTEL as is described in Exhibit 21 attached and incorporate ex 21 herien by

reference, who Cecile by verifying that it was she who filled out each of the individual rent reciets for Lorean Judson the tenant of space #7 at the Martels trailer park from 1/7/74-8123 up to 4/1/84-1359 a total of ten years and four months worth of individually written rent reciets also noted attached to Ex 21 is a (10 of 6) March 16th 1993 affidavit also of Cecile E. Martel covering all 27 years worth of rent reciets ofr space #7 and in harmony with the correspondence of May 5th, June 3rd, & July 12th of 1977. And said rent reciepts are available for inspection at any time upon proper notice.

(4) also meeting the obligation for a second time and supporting the "ten year" period required under RCW 4.16.020 is the July 9, 1991 3 page leter from Puget Power verifying the light bill for Lorean Judson of his tenancy at 15238 S.E. 272nd St Kent RV start date 01/08/74, stop date 07/01/84 as is noted in my May 5th 2000 20 day response marked as exhibit 31 please incorporate exhibit 31 herien by reference and is in harmony with ER 902(h).

(5) Possession to be adverse must have continued for entire statutory period. (Bowdan-Gazzam Co. vs Kent (1944) 22 Wash. 2d 41, 154 P.2d 292) See Exhibits 21 and 31 noted in sections (3) & (4) above

(6) To establish title to adverse possession, claimants must prove their possession is actual and uninterrupted, open and notorious, hostile and exclusive, under a claim of right made in good faith for the statutory period. (Roy v. Goerz (1980) 26 Wash. App. 807, 614 P.2d 1308).

(7) satisfying the obligation that the claimant must prove the fact the the "possion is actual" under the requirements of RCW 4.16.020 is met and satisyed by the actual proof of the actual occupency itself of tax lot 9071

by the grantors tenant of the Martels trailer park Lorean Judson and of which is in accordence with ER 902(d) a certifyed copy is attached as Exhibit 1 the February 14th, 1977 survey of Laurence F. Dixon of which said occupancy is noted in the survey at the northwest corner 20' mobile home. And also noting said occupance is the 7/11/81 L.F.D. 3 additional updates as is noted in EX 7-11-81 attached the original survey provided by Vukich and is filled filled with the motion. Please incorporate exhibits 1 and exhibits 7/11/81 attached herien by reference as if set fourth in full.

(8) To satisfy the wording of the term under R.C.W. 4.16.020 "made in good faith" for the statutory period this obligation is accomplished by the defendant, in accordence with The Washington State Court Rules under CrR 7.8(b)(3) and ER 408 4th sentance and "fraud" is to be declared positively in accordence with CR 9(b) BY THE FOLLOWING EXHIBIT DESCRIBED AS EXHIBIT .5.

8.1) Attached as exhibit 38 is the 21 page TRANSCRIPT OF PROCEDINGS by Rose Landberg dated 3/15/93 with exhibit PLAINTIFFS EXHIBIT I002264 #5 attached and of which plaintiff Vukich testifyed against my son Daryl Dahlquist at page 4 at the 5th Question

Q: Showing you what has been marked Plaintiff's Exhibit No. 5 for identification purposes, without telling or publishing the contents of this, can you identify it?

A. This is a document that I got from Williams and Roth Associates who is, ther,re engineers for Cascade Sewer District. This is their survey that they took replacing the survey stakes that were in prior to the sewer district

coming in and removing them with their equipment.

Q: When would that be?

A: 1983.

Q: Is that a true and correct copy?

A: Yes it is.

Q: At this time the State would move to admit this.

Court: Any objection?

Defense: No objection.

The Court: All right. Admit No. 2.

The main point I trying to adress here is this Exhibit No. 5 dated 4-14-83 in the bottom right hand corner clearly can be seen that it portrays a clear survey as of April 14, 1983, that is "no occupancy appears" IN EXHIBIT 5 which is the the work product of exhibit 4 the July 8, 1991 leter that was provided to my son Daryl by Marri Lynn Aguilar, the Senior Development Coordinator with Soos Creek Water and Sewer District. In exhibit 4 we can see that it in turn is supported in exhibit 5 were it states "Note boundary shown herien is taken from survey furnished by Vukich." The only problem with the survey in exhibit 5 is that it shoud stil show the trailer as is noted in Exhibit 1 dated February 14th 1977 as exhibit 7/11/81 the L.F.D. update because the trailer in exhibits 1 and 7/11/81 should also be noted in exhibit 5 because it is still there as is noted in exhibits 21 and 31 noted in sections (3) and (4) above.

So the defendent Betty Dahlquist thru her son Daryl Dahlquist believes it should be very clear for all to see that my son was denied a fair trial on March 3, 1987 as a result of plaintiff Vukich's own testimony and fraudulent misrepresentation of exhibit 5 that is documented in exhibit 38 at page 4 attached. Not only was the trial judge and jury decieved but my son was also because as of April 14 1983 Lorean Judson was still a tenant of space #7 at the Martels trailer park and therefore I believe I have meet the obligation beyond a reasonable doubt in satisfying the meaning of the term found in RCW 4.16.020 "made in good faith"

(9) One of the main elements to be considered under RCW 4.16.020 is the elements including whether "possession was adverse or permission" are questions of fact which, when resolved by the trial court, will not be overturned if supported by substantial evidence. (Diel v. Beekman (1972) 7 Wash. App. 139, 499 P.2d 35). And to meet this requirement of non permisive youse is documented in exhibit 38 at page 2 in question number 7 plaintiff Vukich testifyed

Q: Have you allowed the Martels to ever youse any of Parcel B?

A: No.

When the trial courts findings as to whether claim based on adverse possession is established or sustained by the record, the Supreme Court will not substitute its judgement thereon. (Hill v. Weidert (L.W.) Farms, Inc. (1969) 75 Wash. 2d 871, 454 P.2d 220). Again plaintiff Vukich testifyed for the record a second time when asked by the prosecuting attorney, Bruce Myokie (exhibit 38, page 10)

Q: "You have never given the defendent any permission to come on your property?"

A: "Absolutely not."

(10) A claim to land based on adverse possession requires the claimant to have maintained "actual possession" (Ex 1 and 7/11/81) that was uninterrupted (Exs 21 and 31 noted in sections (3) & (4) above) open and notorious and eclusive made in "good faith" (CrR 7.8(b)(3) ER 408 4th sentance) for the statutory period.

BETTY DAHLQUIST'S Motion to compel answers to interrogatories should be granted.

RESPECTFULLY RESUBMITTED this 22nd day of February 2001

/s/ Betty C. Dahlquist
Betty C. Dahlquist
15238 S.E. 272nd st
Kent Wa 98042
(253) 621-2906

/s/ Daryl L. Dahlquist
Daryl L. Dahlquist
res gestae witness. and
by general power of
attorney

[LOGO] SOUND LAW GROUP PLLC

COPY
Lex Mathis
206-767-1688
lex@soundlawgroup.com

227 South Orcas St.
Seattle, WA 98108
206-767-1155
Facsimile:
206-767-1161
soundlawgroup.com

December 2, 2003

VIA FIRST CLASS MAIL

Mr. Christopher Steuart
1220 SW Webster Street, Suite B
Seattle, WA 98106

RE: Vukich v. Dahlquist; 50704-4-I

Dear Mr. Steuart:

We conferred with David Newberry of Newberry Reality who advised us that the sale of Mr. Dahlquist's property was referred to you. We have listed below our understanding of the outstanding liens on the property. If you have any questions, disagree or wish to contest any of them, please advise us accordingly.

Total:	$495,000
– 1/3 (Bid $10,000 of prior judgments*)	$165,000.00=$330,000.00
– 1-31-02 judgment	$64,239.32=$265,760.68
– Interest at 12% 2002	$7,708.72=$258,051.96
– Interest at 12% 2003	$6,423.93=$251,628.03

– Attorney Fees for Appeal	$3,205.98=$248,422.05
– Residual of Prior Judgments Minus bid price for 1/3*	$42,877.24=$205,544.81
Interest to date from residual balance from Jan 16, 2002, for Dahlquist	$9,432.99=$196,111.82

A failure to honor these will result in a cause of action for fraud against all those involved. Our client made an offer on the property for the asking price of $495,000. There is some room to negotiate assuming the offer is accepted on or before December 9, 2003. Our client is also willing to forego future liens and attorneys fees should this matter be amicably resolved. If we do not hear from you on or before this date we will assume you do not wish to cooperate.

Should you fail to respond we will proceed with obtaining an additional judgment and award of attorneys fees from the Supreme Court which we will then add to the above-referenced liens. At that time we will conduct another sheriff's sale for the remainder of the property to collect only upon the recently obtained judgment. At that time, we will use the residual judgment to attach any remaining property of your client. Further, if you do not cooperate in the sale, we will initiate a forced sale of the property once all the above-referenced liens have been perfected.

On a practical note, if your client fails to cooperate, he will lose everything and get very little compensation. If he cooperates he will get in excess of $175,000. We feel this would be an excellent transaction for all parties to go their separate ways and end nearly thirty years of feuding.

I cannot stress enough how seriously we take our client's rights and will vigorously pursue this matter as stated.

Sincerely,

SOUND LAW GROUP, PLLC

Lex Mathis

LM

cc: Patrick Vukich
Betty Dahlquist
Daryl Dahlquist
David Newberry

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

RAYMOND GROOMS, being first duly sworn upon oath, deposes and states as follows:

I am not related to Daryl Dahlquist or the Martels and I have no interest in their dispute. I am competent to be a witness herein.

I recall a two foot high double rail fence at the northeast corner of the Martel property about forty feet long. I do not recall when it was gone. On or about May 1, 1984, I saw Mr. Vukich pull out the power pole at the northeast corner of the Martel property.

I do not want to appear in court because it would make Mr. Vukich mad, and I do not want any trouble.

/s/ Raymond Grooms
RAYMOND GROOMS
Address:

SUBSCRIBED AND SWORN TO before me this 24 day of July, 1987.

/s/ [Illegible]
NOTARY PUBLIC in and for the State of Washington, residing at Kent. My Commission Expires: 1/1/91.

No. 872158489
Dahlquist
Plaintiff

Vukich
Defendant

WASHINGTON TITLE INSURANCE COMPANY

803 SECOND AVENUE

MAIN 1534

SEATTLE 4, WASHINGTON

REFER TO

B-490113
U-5

Canyon Mill Co.,
Kent, Washington

Tacoma Savings and Loan Association
Tacoma, Washington

This is a report as of April 6, 1955 at 8 a.m. for $7100.00 mortgagee's policy, A.T.A. form, insuring Tacoma Savings and Loan Association, a Washington corporation, covering the following property:

> South 160 feet of the east 80 feet of the west 92 feet of the west half of the east half of the west half of the southeast quarter of the southwest quarter of section 26, township 22 north, range 5 east, W.M., in King County, Washington; EXCEPT roads.

Title is vested in FRED J. MARTELL and CECILLE E. MARTELL, his wife.

Subject to:

1. General taxes for the year 1955 payable in the sum of $13.52 on said premises and other property (being Tax no. 58).

2. Easement for water pipe line located in the southeast corner of said premises as disclosed by instrument dated March 29, 1955, recorded April 5, 1955, under auditor's file no. 4558406.

3. Reservations contained in deed from Herbert S. Upper, recorded February 18, 1902, under auditor's file No. 226333, substantially as follows:

   Excepting and reserving from said lands such as are now known or shall hereafter be ascertained to contain coal, iron, oil or gas, and also the use of such surface ground as may be necessary for mining operations, and right of access to such reserved and excepted coal, iron, oil and gas lands for purpose of exploring, developing and working the same.

4. Questions of survey, rights of persons in possession, material or labor liens and any impairment of existing improvements by reason of the easement noted in paragraph 2, disposition of which will be determined by our further inspection, and survey if necessary, of the premises.

   NOTE: Our inspection made April 4, 1955 disclosed:

   Encroachment by driveway a maximum of 2.0 feet, more or less, east of west property line; Fence a maximum of 7.0 feet, more or less, south of north property line; and power pole 9.0 feet, more or less, south of north line and 21.0 feet, more or less, east of west line.

   Premises to be unimproved;

   No improvements within the last 90 days;

   Question of easement to be determined later.

This report shall have no force or effect except as a basis for the policy applied for.

/s/ Robert Carlson
Assistant Secretary

PREMIUM: $38.25
RSJ:et

[SEAL]

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I, M., JANICE MICHELS, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is true perfect transcript of said original and of the whole thereof, in TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office in Seattle on the day of Jul. 25, 1991.

M. JANICE MICHELS, Superior Court Clerk

By /s/ [Illegible]
Deputy Clerk

EXCERPTS OF LETTER DATED JUNE 30, 1999

AMENDED RESPONSE TO INTERROGATORY NO. 38:

Only the First American Title Report. Disclosed that legal title was held by John C. Kolstad, subject to a real estate contract to Patrick Vukich. Also disclosed a Quit Claim Deed to Daryl Dahlquist from Cecile Martel as to Parcel B, but that she had no interest in Parcel B. Also disclosed surveys and easements of record.

(Amended response s of 6-10-94)

INTERROGATORY NO. 39: With reference to defendant's (Exhibit 27, 2 of 2) paragraph 4, question of survey, rights of persons in possession, what do you believe is meant by the words "Question of Survey, Rights of Persons in Possession"? (For the purposes of this interrogatory, you are not being asked to give a legal opinion, but only to describe your understanding of the facts as they apply to the basis of your complaint.)

ANSWER: Exhibit not provided. Plaintiff objects to question as the words were not prepared by him, to the best of his knowledge. (Production #1 served on 1-7-94; answered on 3-3-94)

AMENDED RESPONSE TO INTERROGATORY NO. 39:

Supplementation. I have found the exhibits. Plaintiff has no knowledge of what this means. Plaintiff's attorney has explained that this is an exception to what the Title Insurance Co. will insure.

(Amended response as of 6-10-94)

Defendant's Third Interrogatories & Requests for Admission 1 through 24 Page 52 of 104 as of September 15, 1994

DARYL L. DAHLQUIST
15250 SE 272nd Street
Kent, WA 98042
(206) 630-4764

[LOGO] **PIONEER NATIONAL TITLE INSURANCE**
A TYCOR COMPANY

REVENUE STAMPS

Filed for Record at Request of

AFTER RECORDING MAIL TO:

CECILE E. MARTEL

15238 S. E. 272nd Kent

Washington 98042 #631-2906

ORIGIONAL

91/04/17 #0775B
RECFEE 2.00
recd f 5.00
CASH SI ****7.00
55

THIS SPACE RESERVED FOR RECORDER'S USE

KING COUNTY
NO EXCISE TAX DUE
Apr. 17, 1991
E1184311

FORM L 56 R

Quit Claim Deed

THE GRANTOR FRED J. MARTEL, as his separate estate, for and in consideration of LOVE AND AFFECTION convey and quit claim to CECILE E. MARTEL, as her separate estate, the following described real estate, situated in the County of KING state of Washington, State of Washington including any interest therein which grantor may hereafter acquire:

The following described real estate, situated in the County of (King), together with all after acquired title of the grantor(s) therein:,

The South 432 feet of the west half of the east half of the west half of the Southeast quarter of the Southwest quarter of Section 26, Township 22 North, Range 5 East, W.M. in King County, Washington, except the following describe tract

Beginning 888 feet of the South of the Northwest corner of the west half of the east half of the west half of the Southeast quarter of the Southwest quarter of said Section 26; . . . Thence East 92 feet; . . . Thence South to the South line of said subdivision; . . . Thence West 92 feet; . . . Thence North to the point of beginning; . . . and excepting the North 16 feet of the South 46 feet thereof conveyed to King County for roads, by deeds recorded under Auditors File # number, 2002257 and 2002262 and except that portion lying within Kent-Kangly Road,

Dated this 15th day of April, 1991,

/s/ Betty C. Dahlquist . . . . . [SEAL]
BETTY C. DAHLQUIST (individual)
FRED J. MARTEL, by BETTY C. DAHLQUIST
s court-appointed guardian for FRED J.
MARTEL. . . . . [SEAL]

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

[SEAL]

On this day personally appeared before me BETTY C. DAHLQUIST, in her capacity as court-appointed guardian for FRED J. MARTEL, to me and to be the individual described in and who executed the within and foregoing instrument, and acknowledged there she

signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15th day of April 1991.

/s/ Caroline J. Hight
Notary Public in and for the State of Washington residing at Seattle
MY COMMISSION EXPIRES:
12-27-93